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# Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1990

Addendum

PORTUGAL

[7 May 1993]

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# PART ONE

## GENERAL BACKGROUND

### I. INTRODUCTION

1. Portugal signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 4 February 1985; its provisions entered into force for Portugal on 11 March 1989 following its approval by the Portuguese Parliament (resolution 11/88 of 1 March 1988).

2. The ratification of the Convention by Portugal does not require the drawing up of new legislation.

3. At the time of ratifying the Convention Portugal recognized the competence of the Committee against Torture to receive and consider communications to the effect that a State party claims that another State party is not fulfilling its obligations under the Convention, and to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State party of the provisions of the Convention.

4. This report, the first which Portugal is submitting to the Committee against Torture, is concerned with the period from 11 March 1989 to 31 March 1992, and is presented in conformity with the provisions of article 19, paragraph 1, of the Convention and with the guidelines adopted by the Committee against Torture at its 82nd meeting.

5. Part One of the report contains information on the country, its population and political structure, on the legal framework for the protection of human rights and on the steps taken in favour of human rights.

6. Part Two contains a detailed analysis of Portuguese legislation and practice with respect to each of the articles of Part I of the Convention.

### II. GENERAL LEGAL FRAMEWORK

The Constitution

7. The fundamental provision relating to protection against torture and other cruel, inhuman or degrading treatment or punishment is embodied in article 25 of the Constitution of the Portuguese Republic, which reads as follows:

> "1. The moral and physical integrity of individuals shall be inviolable.
>
> 2. No one shall be subjected to torture or to cruel, degrading or inhuman treatment or punishment."

8. However, there are other provisions which also aim to ensure protection against torture and other cruel, inhuman or degrading treatment or punishment.

9. This is the case of article 32, paragraph 6, of the Constitution, which establishes, with respect to the guarantees of criminal procedure, the invalidity of evidence obtained through torture, coercion or violation of the moral integrity or security of the individual.

10. This paragraph reads as follows:

> "Any evidence obtained through torture, coercion, violation of the moral integrity or security of the individual, or wrongful interference in private life, the home, correspondence or telecommunications shall be null and void."

11. Article 30 of the Constitution, by establishing that no one shall be subjected to a sentence or security measure involving deprivation or restriction of freedom for life or for an unlimited or indefinite term, reiterates certain considerations in respect of the dignity of the human person in the following terms:

> Article 30 (Limits on sentences and security measures):
>
> "1. No one shall be subjected to a sentence or security measure involving deprivation or restriction of freedom for life or for an unlimited or indefinite term.
>
> 2. In case of danger due to grave mental disorder that cannot be treated in an open environment, security measures involving deprivation or restriction of freedom may be extended successively by judicial decision in each case, for as long as the danger lasts.
>
> 3. Sentences shall not be transferable.
>
> 4. No sentence shall involve, as a necessary consequence, the loss of any civil, labour or political rights.
>
> 5. Convicted persons who are subjected to a sentence or a security measure involving deprivation of freedom shall continue to enjoy the fundamental rights, save the limitations that are inherent in the sentence and the requirements of its enforcement."

12. According to article 15 of the Constitution, aliens and stateless persons temporarily or permanently resident in Portugal have the same status as Portuguese citizens as regards legal protection in this respect:

> "1. Aliens and stateless persons temporarily or permanently resident in Portugal shall enjoy the same rights and be subject to the same duties as Portuguese citizens."

13. Finally, in respect of constitutional protection against torture and other cruel, inhuman or degrading treatment or punishment, mention should be made of the legal provisions of the Portuguese Constitution in the field of fundamental rights.

14. Article 16 (Fundamental rights: scope and sense) reads as follows:

"1. The fundamental rights embodied in the Constitution shall not exclude other rights resulting from the law and from the applicable rules of international law.

2. The constitutional and legal norms relating to fundamental rights shall be interpreted and applied in accordance with the Universal Declaration of Human Rights."

15. The Universal Declaration of Human Rights, article 5 of which provides for protection against torture and other cruel, inhuman or degrading treatment or punishment, entered into force for Portugal on 9 March 1978.

16. The result, in terms of protection against torture, is a legal system with a special legal force, which existed even before the ratification of the Convention against Torture and is set forth in article 18 of the Constitution in the following terms:

"1. The constitutional provisions relating to rights, freedoms and safeguards shall be directly applicable to and binding on public and private bodies.

2. Rights, freedoms and safeguards may be restricted by law only in those cases expressly provided for in the Constitution. Restrictions shall be limited to what is necessary to safeguard other rights or interests protected by the Constitution.

3. Laws restricting rights, freedoms and safeguards shall be general and abstract in character, may not have retroactive effect and may not limit in extent or scope the essential content of constitutional principles."

Criminal law

17. In conformity with these constitutional provisions, article 412 of the Penal Code punishes any official who, in criminal or disciplinary proceedings or proceedings connected with an administrative offence resorts to violence, serious threats or any other illegal means of constraint in order to obtain a written or oral statement from an accused person, informant, witness or expert, or to prevent them from making such a statement.

18. The constitutional principles in question are also incorporated in the Penal Code in regard to "offences against the physical integrity of individuals" (art. 142 et seq.) and "offences against the freedom of individuals", for example threats (art. 155), coercion (art. 156), illegal confinement (art. 160) and the kidnapping of minors (art. 163) or others (art. 162). Recourse to torture or to acts of cruelty aimed at increasing the suffering of the victim shall qualify the sentence normally applicable (art. 132, para. 2 (b), of the Penal Code).

19. These principles are also found in the law on sexual offences. For example, article 209 of the Code makes it an offence to have sexual relations with or behave indecently before detainees or persons in similar circumstances.

20. Finally, the same principles also underlie offences against the family such as a desertion of one's spouse and children in the face of moral danger (art. 199).

The law on penal procedure

21. Article 140 of the Code of Penal Procedure concerns the methods used to interrogate accused persons; it prohibits the use of violence, ill-treatment, bodily harm, or the use of cruel, fraudulent, hypnotic or other means likely to impair the accused's will or reasoning power.

22. As to court witnesses, article 138, paragraph 2, of the Code empowers the president of the court to prohibit questions which are suggestive, misleading, improper or vexatious.

23. The Code prohibits the use of evidence obtained by torture, coercion or, in general, impairment of the physical or psychological integrity of individuals even with their consent (art. 126).

24. The above prohibition also applies to evidence obtained by unauthorized interference with privacy and the home and by tampering with correspondence or telecommunications (art. 26, para. 3).

25. Evidence obtained by these means is null and void and may be used only in criminal proceedings against the persons obtaining such evidence.

Penitentiary law

26. Article 6, paragraph 3, of Decree-Law No. 265/79 of 1 August establishes that a detainee shall enter a prison out of the sight of the other prisoners if this is necessary to protect his privacy.

27. Searching of detainees is regulated by article 116. For example, a search must fully respect the detainee's personality and dignity (para. 2) and may be carried out only when instruments of detection have failed (para. 4).

28. In all cases where force is used it must be employed in proportion to the circumstances (art. 124); it must be restricted to the minimum required and may be used only to ensure safety and order (art. 122 et seq.). Article 125 requires that prior warning is given, with a view to intimidation, when physical force is employed (new version of Decree-Law No. 49/80 of 22 March).

29. Use of force is always followed by a written investigation into the circumstances.

30. There are also provisions covering the use of coercion in health care. Pursuant to article 127, it is prohibited to oblige a detainee to undergo medical examinations, treatment or feeding unless his life or health is in danger. Such measures may only be prescribed and applied under the supervision of a doctor.

31. The following special safety measures are authorized (art. 111): prohibition of the use, and confiscation, of certain objects; observation of the prisoner during the night; isolation of the prisoner from the prison population; removal of, or restrictions on, outdoor periods; the use of handcuffs, if necessary, under medical supervision; confinement in a special security cell. Such measures will be authorized only if it is impossible to prevent or remove the danger of escape or in the event of a serious disturbance to the order and safety of the establishment.

32. The director of the establishment is responsible for deciding on the application of these special security measures. In the event of immediate danger the measures may be ordered by his legal substitute, but they must then be confirmed as rapidly as possible.

33. Article 126 of Decree-Law No. 265/79 lays down the general rules on the use of firearms by prison personnel or persons working in a prison. The use of firearms by the judicial police is regulated by Decree-Law No. 295-A/90 of 21 September 1990. The use of weapons in detention centres for young persons is prohibited (Decree-Law 90/83 of 16 February 1990, art. 20).

Police measures

34. In this connection, article 272 of the Constitution provides that the police may only act in the cases and in accordance with the rules laid down by law and only as strictly necessary. It states:

> "1. The police shall have the function of defending democratic legality and protecting internal security and the rights of the citizens.
>
> 2. The measures taken by the police shall be those provided for by law and shall not go beyond what is strictly necessary.
>
> 3. The prevention of crimes, including crimes against the security of the State, shall be effected only in accordance with the general rules governing the police and in a manner which respects the rights, freedoms and safeguards of the citizens.
>
> 4. The rules governing the security forces shall be fixed by law. Each such force shall have a single form of organization throughout the national territory".

The same rule applies to the use of coercion by the public safety police (art. 3 of Decree-Law No. 151/85 of 9 May 1985).

35. Decree-Law No. 292-A/90 of 21 September 1990 requires officials of the judicial police to refrain from inflicting torture, inhuman, cruel or degrading treatment and gives them the right not to execute and, if necessary, to disregard any orders or instructions to apply such treatment (art. 91).

36. This principle is also established in the organizational or statutory laws relating to other police forces.

Medical or scientific experiments

The Physicians' Code of Ethics

37. In 1982, the physicians drafted a new Code of Ethics. It is of interest to recall here some of the basic concepts in the Code which relate to the application of these principles.

38. In chapter II, concerning life and death, the problems dealt with include:

- Treatment involving the risk of termination of a pregnancy;
- The duty to refrain from providing useless treatment;
- The decision to put an end to the use of exceptional methods of prolonging survival artificially;
- The removal of organs from dead or living persons;
- Artificial insemination and sterilization.

39. Chapter IV relates to the problems arising from experiments on human beings. It lays down safeguards and ethical restrictions applicable to such experiments.

40. Article 44 of chapter I provides that any physician who has treated a child or an elderly, handicapped or legally incapacitated person and observes that such a person has been abused, subjected to ill-treatment or other form of cruelty shall take the appropriate measures for their protection, and in particular notify the police or the competent social authorities.

41. Chapter III deals with ill-treatment of sick persons deprived of their freedom.

42. Paragraph 2 of article 56 lays down the general principle that it is the duty of the physician always to respect the well-being and physical integrity of the sick person, in accordance with the rules of the code of ethics. Specifically, it provides that -

> "1. The physician shall under no circumstances perform, cooperate in or agree to the perpetration of acts of violence, torture or other cruel, inhuman or degrading acts, whatever the crime committed or imputed to the person arrested or detained, and especially during a state of emergency or a state of war or during a situation of civil conflict".

43. These provisions also require a physician to refuse to hand over equipment, instruments or medicaments, or to transfer his scientific knowledge, to enable the infliction of torture.

Repression of violent crimes

Protection of the victims of violent crimes

44. Act No. 461/91 of 13 August 1991 provides special protection for women who are victims of violence. To that end, a special support service for women is to be established within the judicial police department. Its main function is to prevent acts of violence against women by ensuring them protection and information about their rights and by making provision for means of punishment where necessary.

45. Decree-Law No. 423/91 of 30 October 1991 has, for its part, supplemented the provisions of the Penal Code while at the same time guaranteeing special protection for the victims of violent crimes, especially in respect of compensation. This instrument establishes the method of determining the provisional compensation to be awarded to victims, and also provides for the subrogation of the State.

Obligations deriving from other international instruments

46. Portugal's participation in action to combat torture has been demonstrated by its ratification of several international instruments on the subject, of regional or world-wide application, as follows:

(a) The International Covenant on Civil and Political Rights;

(b) The Convention on the Elimination of All Forms of Discrimination against Women;

(c) The International Convention on the Elimination of All Forms of Racial Discrimination;

(d) The Convention on the Rights of the Child;

(e) The Geneva Conventions and Protocols concerning the protection of victims of armed conflicts;

(f) The European Convention for the Protection of Human Rights and Fundamental Freedoms;

(g) The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Committee of which recently visited Portugal (February 1992).

## PART TWO

## INFORMATION ON THE IMPLEMENTATION OF ARTICLES 1 TO 16 OF THE CONVENTION

47. The following comments refer to the way in which Portuguese legislation ensures the application of articles 1 to 16 of the Convention.

### Article 1

48. This article defines the meaning of the term "torture" for the purposes of the Convention.

49. There is no definition of torture in Portuguese law. However, on account of the value attached to international law in the Portuguese legal system, the definition given in the Convention must be considered as having been adopted into Portuguese law upon the entry into force of the Convention. In accordance with article 8 of the Constitution:

> "1. The rules and principles of general or ordinary international law shall be an integral part of Portuguese law.
>
> 2. The rules laid down in all duly ratified or approved international conventions shall, immediately on their official publication, be incorporated into domestic law and shall remain in force as long as they are internationally binding upon the Portuguese State".

### Article 2

50. Concerning the legislative, administrative, judicial and other measures adopted in Portugal to combat torture, reference is made to the first part of this report, in which the general legal framework is outlined.

51. There is no doubt that the prevention of torture and its punishment are areas between which there is a substantial degree of interaction. Therefore, against the background of the general framework outlined above, some of the features of the situation prevailing in Portugal are described below.

52. Article 18 of the Constitution, referred to earlier, contains provisions concerning fundamental rights. Its first paragraph stipulates that the individual's right to moral and physical integrity is inviolate, and respect for this right is directly applicable to and binding on both public and private bodies.

53. These provisions are supported by the provisions in the Penal Code and the Code of Penal Procedure designating as punishable, and stipulating penalties in respect of, acts falling within the scope of article 1 of the Convention which, upon its ratification, was incorporated into Portuguese law, pursuant to paragraph 2 of article 8 of the Constitution (see paras. 14 to 16 above).

54. The organizational and statutory regulations governing the police forces and the gendarmerie have been radicially changed in order to reinforce further the prohibition of torture and other cruel, inhuman or degrading punishment or treatment by imposing severe disciplinary and penal sanctions on persons committing such offences.

55. Take, for example, Decree-Law No. 260/91 of 25 July 1991, amending Decree-Law No. 333/83 of 14 July 1983, concerning the Public Security Police, and Decree-Law No. 39/90 of 3 February 1990 concerning the National Republican Guard.

56. Article 2, paragraph 1 (a), of the latter instrument was even expressly amended in order to give the National Republican Guard a role of "legal guarantor of the exercise of the rights and fundamental freedoms of citizens and of the normal functioning of the democratic institutions". In addition, Decree-Law No. 295-A/90 of 21 September 1990, which adopted the organizational regulations governing the judicial police, contains a provision in its article 91, paragraph 1 (b), reading as follows:

> "The special obligations incumbent on the officers of the judicial police include the following:
>
> (b) To refrain from committing any acts of torture and from inflicting any cruel, inhuman or degrading treatment and also from executing any orders or instructions which ...".

57. Additional legislation has been introduced to strengthen the protection against torture, both directly and indirectly. This includes:

- Decree-Law No. 324/85 of 6 August 1985, which lays down the rules, to be applied case by case and by a decision of the Council of Ministers, for the award of compensation to government officials and employees who, on account of their duties, are the victims of criminal acts of intimidation or of reprisal against their lives, physical integrity, freedom or highly valuable assets. Compensation may be paid to the families or dependants of the officials concerned, if such persons have themselves been victims of criminal acts.

- Decree-Law No. 48/87 of 29 January 1987, includes jurors in the category of government employees, according to the terms and for the purposes of Decree-Law No. 324/85, of 6 August 1985.

- Act No. 61/91 of 13 August 1991, which grants special protection to women who are the victims of violence.

- Decree-Law No. 423/91 of 30 October 1991, which grants special protection to the victims of violent crimes.

58. Portugal has also made great strides forward in the field of international cooperation by agreeing to accede to various bilateral and multilateral international conventions.

59. Furthermore, Decree-Law No. 43/91 of 22 August 1991 authorizes international cooperation in criminal matters in the absence of a treaty or international convention binding the Portuguese State in this area and establishes the domestic regulations defining the cooperation procedure to be followed and the competent authorities.

60. It covers extradition, the transfer of sentenced persons, the supervision of prisoners or detainees, the execution of criminal sentences, mutual aid in judicial matters and the referral of criminal proceedings.

61. Regarding international cooperation in criminal matters, the same Decree-Law also establishes the principles governing international protection against torture and the defence of human rights in general. For example, its article 6, paragraph 1, and article 7 read as follows:

"Article 6. General conditions precluding international cooperation

1. A request for cooperation shall be refused:

(a) If the procedure does not comply with or observe the conditions set in the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, or in any other relevant international instrument ratified by Portugal;

(b) If there are serious grounds to believe that the cooperation is requested in order to prosecute or punish a person on account in particular of his race, religion, sex, nationality, language, political or ideological convictions or membership of a particular social group;

(c) If the person's situation is likely to be aggravated for any of the reasons set out in the previous paragraph;

(d) If such cooperation may result in his being tried by a court of special jurisdiction or is connected with the enforcement of a decision handed down by such a court;

(e) If the act to which it relates is punishable by death or by life imprisonment;

(f) If such cooperation concerns an offence to which a permanent protective measure is applicable.

Article 7. Refusal on account of the nature of the offence

1. A request shall also be refused if the procedure concerns:

(a) An act which, under Portuguese law, constitutes a political offence or an offence connected with a political offence;

(b) An act which constitutes a military offence which is not simultaneously covered by ordinary criminal law.

2. The following offences shall not be considered political offences:

(a) Genocide, crimes against humanity, war crimes and serious crimes pursuant to the Geneva Conventions of 1949;

(b) Offences covered by article 1 of the European Convention on the Suppression of Terrorism, opened for signature on 27 January 1977;

(c) Acts referred to in the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 10 December 1984 by the United Nations General Assembly;"

62. At this point mention should be made of measures relating to training, information and the development of an awareness of the problem of torture and other forms of ill-treatment.

Information

63. This heading also covers a broad range of measures. They include, on the one hand, symposiums, seminars or information sessions and, on the other, the systematic publication of material on human rights.

64. Since Portugal acceded to the community of democratic nations, special attention has been devoted to measures to provide information on, and to develop awareness of, human rights, in respect of the domestic situation (for example with regard to the role of women in society); of the significance of particular items of legislation, as in the case of the reform of the Civil Code and of criminal law; or in the spheres of international law and of international organizations and their activities.

65. By way of example, we may mention the events held on the occasion of the fortieth anniversary of the Universal Declaration of Human Rights, which led to the organization of several information sessions in the Assembly of the Republic, in the Bar Council - organized in conjunction with the Ministry of Justice and attended by the President of the Republic - and in the Portuguese Association of Democratic Jurists.

66. The scope of article 16 of the Constitution, which, as already mentioned, stipulates that the constitutional and legal norms relating to human rights are to be interpreted in accordance with the Universal Declaration of Human Rights, undoubtedly helped to account for the interest aroused.

67. In January 1988 the Ministry of Foreign Affairs organized a symposium on the United Nations Commission on Human Rights. This was precisely the year in which Portugal assumed membership of that body, a factor which intensified the interest of participants and of the media.

68. In May a meeting was held, in conjunction with the Advisory Services branch of the Centre for Human Rights, on the activities of the various bodies established by the United Nations human rights conventions.

69. This meeting, which addressed participants from all Portuguese-speaking countries, was an opportunity to provide the officials present with training in the preparation of reports.

70. Major strides have been made in the publicizing of human rights. It is our view that if people are to be more broadly aware of and actually to benefit from human rights, it is essential to provide systematic, up-to-date and accessible information.

71. Within the Ministry of Justice, the Office for Documentation and Comparative Law has set up a documentation centre specialized in human rights; the centre receives, processes and ensures the dissemination of the most significant works and the principal documents adopted within the international organizations; work relating to the Convention against Torture and the action of the Committee naturally constitute part of this. One of its most significant activities is dissemination of this material to the various commissions on legislative reform.

72. Since 1980 the Ministry of Justice has been publishing a bulletin on documentation and comparative law whose purpose is to inform and develop the awareness of jurists concerning EC, international, foreign and comparative law. It always includes a chapter on human rights.

73. The bulletin ensures the publication of the case law of the bodies in Strasbourg, of the Inter-American Court of Human Rights and of the Human Rights Committee (such as the decisions handed down in A.M. against Denmark and Duilio Fanali against Italy), of articles on these bodies' activities and the translation into Portuguese of the most recent instruments adopted (such as the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and of the Convention on the Rights of the Child) or in the process of being adopted.

74. In the same field, it should be mentioned that the fortieth anniversary of the Universal Declaration of Human Rights was celebrated by a number of commemorative events, and in particular the publication in Portuguese of a compilation of international human rights instruments, prepared in conjunction with the United Nations Centre in Portugal.

75. The compilation, which includes the principal conventions, was sent to all Portuguese-speaking countries and was widely distributed in Portuguese schools.

76. Mention should also be made of the programmes organized by the Department of the Provedor de Justica (Ombudsman) on the radio, to ensure widespread and accessible dissemination of knowledge of the fundamental rights of citizens.

77. In the areas of information and development of awareness, mention should be made of the "Citizen and Justice" programme, launched on 17 April 1990 by decision No. 22/90 of the Minister of Justice, published in Official Journal No. 89, 2nd series, of the same date.

78. The programme is designed to develop understanding of, facilitate access to, and foster citizens' participation in the judicial system. It provides for a range of information activities as well as means of achieving more effective operation of the judicial system and the possibility for community organizations to intervene, in the interests of participating in community development.

79. The information activites undertaken include the publication of an easily accessible information brochure containing the text of the European Convention on Human Rights.

80. The role played by certain departments in developing information on and awareness of the evil of torture and ill-treatment in general and on compliance with legal standards relating to fundamental rights should be underscored.

81. One example is the activity of the Gabinete Técnico de Prevenção Criminal of the judicial police, which is responsible for planning and implementing publicity campaigns to develop awareness among victims and to provide them with information, at the same time focusing on prevention as the best means of averting crime and victimization.

82. The public safety Police also carries out publicity campaigns and campaigns to develop awareness among victims and to provide them with information.

83. A similar role is played by the Portuguese Association for the Support of Victims (APAV), established on 25 June 1990 by an authentic instrument, published in the Official Journal of 12 July 1990. Its aims, according to its statutes, are as follows:

"Article 3

1. In order to achieve its aim, APAV intends in particular:

(a) To promote the protection of and support for the victims of criminal offences generally, and in particular for those in greatest need, through information, individual attention and guidance and the provision of moral, social, legal, psychological and financial assistance;

...

(e) To promote and participate in programmes, projects and activities in the fields of information, training and to promote greater awareness among the public."

84. As regards more specifically minors and women, mention has to be made of the activities of the "Support centres for ill-treated children" and of the "Equal rights commission".

85. These centres operate on a voluntary, interdisciplinary basis and are responsible for comprehensive and integrated measures regarding the personal situations of ill-treated children, especially in the medical, psychological, legal and social spheres.

86. The Equal Rights Commission is a governmental body whose remit extends, inter alia, to the problem of victims of ill-treatment within the family.

87. In the sphere of information and public awareness, special reference should also be made to the role played by the following departments: the Portuguese section of Amnesty International, the Law and Justice Association (the Portuguese section of the International Commission of Jurists), the Human Rights Section of the Bar Council and the department of the Provedor de Justica (Ombudsman)).

Human rights teaching

88. Attention is devoted to a number of human rights issues in the various levels of official education, in the history, philosophy, political science, sociology and Portuguese language curricula. In this spirit, a number of schools have even organized exhibitions, debates and symposia which have been received with keen interest.

89. At the university level the knowledge acquired hitherto is being further developed to permit the study of international systems of human rights protection. Accordingly, human rights has been incorporated as a legal discipline into the curricula of university law courses for jurists as well as into the basic training of Portuguese judges.

90. Teacher training is the subject of keen interest. This is reflected by the growing attendance at the courses organized by the Institut René Cassin, in Strasbourg, as well as at those organized by the non-governmental organization l'Ecole instrument de paix, which has consultative status with the United Nations.

91. At the end of 1988, in recognition of the importance of human rights teaching, the Government of Portugal set up a commission to promote human rights and combat inequality in education, with a specific brief to study the multidisciplinary nature of this approach and to make recommendations for the strengthening of the study of human rights and for the promotion of greater awareness on the part of teachers and pupils (Decree 195/ME/88 of 12 December).

Training

92. Portugal appreciates the importance of training as a means of preventing human rights violations and for a number of years has provided systematic training for a number of professions whose work is essential to secure fundamental rights, freedoms and guarantees.

93. In addition to the measures mentioned above, we shall focus here on the training of judges and police officials.

94. Since it was established, the Portuguese judges' college has provided training in the sphere of human rights and the international machinery for their protection, thereby contributing, through the study of the main texts in

force in Portugal, to the development of awareness among judges of the value and importance of international human rights law. In view of its regional vocation, the European Convention receives particular attention.

95. In addition, the college and its students participate in a number of scientific and cultural activities organized to publicize international law and the activities of the international organizations; one example is the seminar on the Convention on the Rights of the Child.

96. It should be noted that the Bar Council has played a part in such activities in connection with training for young lawyers who are required by their statute to undergo a period of in-service training before freely exercising their profession.

97. As an illustration, the information provided to judges regarding appeals to international bodies, such as those in Strasbourg or the Human Rights Committee, is of considerable value to them.

Police officials

98. Following the amendment of the organizational regulations relating to the police forces in 1985, the recruitment and training of officials in the different forces have evolved considerably, particularly with respect to public relations and to rights, safeguards and fundamental freedoms.

99. During 1989 the curriculum of training courses for police officers offered by the School of Higher Police Studies was modified, together with those of the various further training courses provided for members of the public safety police or the National Republican Guard.

100. Emphasis is placed, in particular, on the principles in constitutional and criminal law and the law on penal procedure which expressly stipulate the primacy of human rights and punish any violations thereof.

101. As regards relations with the public, all officials must carry with them a code of conduct which stresses the purposes of police activities, that is, the defence of democratic legality and the fundamental rights of citizens, and contains rules of courtesy towards the public as well as a code of individual action.

102. This code of action stipulates that the police must act impartially and with due respect for fundamental rights and freedoms, within the limits laid down by the law and without resorting to illegal or manifestly excessive measures.

103. A significant portion of the training programmes for police officials, which vary according to their rank, is devoted to rights, freedoms and safeguards, both at the basic training and further training levels.

104. In addition to the historical evolution of human rights, the courses cover the universality of human rights, non-discrimination, legal protection

and information, and the activities of the Provedor de Justiça (Ombudsman) and the courts. Special emphasis is placed on the study of regional machinery for the protection of universal human rights.

105. The courses also currently include the study of the Universal Declaration of Human Rights, the Covenants, the conventions against torture of the United Nations and the Council of Europe, the European Convention on the control of the acquisition and possession of firearms by individuals and the European Convention on spectator violence and misbehaviour at sports events, which are in force in the domestic legal system.

106. It is worth stressing that even the selection and recruitment of private security personnel (authorized by Decree-Law No. 282/86 of 5 September) must take into account their familiarity with and their obligations in respect of fundamental rights, freedoms and safeguards.

107. With respect to other professional categories it should also be mentioned that the prison services are provided with the texts in Portuguese of the principal international instruments, in particular the Code of Conduct for Law Enforcement Officials, the Principles of Medical Ethics, the Standard Minimum Rules for the Treatment of Prisoners and the recently approved European Prison Rules.

108. Finally, further evidence of this concern in professional training and activities is the Physicians' Code of Ethics, which reflects, for example, the principles with respect to torture already mentioned above. The Code even prohibits the handing over of equipment, instruments or medicaments, or the transmission of scientific knowledge, which would permit recourse to violence.

109. In Portugal, a state of siege or a state of emergency may not be invoked as a justification for torture.

Pursuant to article 19, paragraph 6 of the Constitution,

> "The declaration of a state of siege or a state of emergency shall in no circumstances affect the right to life, personal integrity and identity, civil capacity and citizenship of the person, the non-retroactive nature of criminal law and the right to defence of accused persons and freedom of conscience and religion."

110. These principles are also included in the National Defence Act (Act No. 29/82 of 11 December) and the Basic Civil Protection Act (Act No. 113/91 of 29 August). However, it is in Act No. 44/86 of 30 September on the regime for a state of siege and a state of emergency that these principles find their clearest expression (Act No. 44/86 of 30 September, art. 2).

111. Thus article 19, paragraph 6, of the Constitution and article 2 of Act No. 44/86 stipulate that even in a state of siege or a state of emergency there is a nucleus of rights, freedoms and safeguards that cannot be suspended, set aside or in any way affected.

112. The fact that the Constitution mentions this nucleus of rights which remain unaffected does not mean that all other rights may or must be suspended if a state of emergency or siege is declared. Each situation calls for consideration of what measures should be adopted. Any measures decided upon are justifiable only if they are in proportion to the existing or anticipated danger, compatible with the objectives pursued and in line with the obligations existing under the relevant legislation at both the national and international levels (art. 3 of Act No. 44/86 on the regime for a state of siege and a state of emergency).

113. Article 2, paragraph 2, of Act No. 44/86, stipulates that the suspension of the exercise of those rights which may be set aside must always observe the principles of equality and non-discrimination. It reflects, inter alia, the spirit of article 13 of the Constitution, which stipulates:

"1. All citizens shall have the same social dignity and shall be equal before the law.

2. No one shall be privileged, favoured, put at a disadvantage, deprived of any right or exempted from any duty on account of his or her ancestry, sex, race, language, place of origin, religion, political or ideological convictions, education, economic situation or social status."

114. Finally, it should be mentioned that aliens and stateless persons temporarily or permanently resident in Portugal enjoy the same rights and are subject to the same duties as Portuguese citizens. They are debarred only from the performance of public duties not of a predominantly technical nature and from exercising political rights (although exceptions have been made with respect to local elections subject to certain conditions) and from the rights and duties restricted exclusively to Portuguese citizens under the law (art. 15 of the Constitution). Moreover, suspension of the exercise of rights, freedoms and safeguards must respect the following limits (Act No. 44/86, art. 2, para. 2):

- Restricted residence or detention of individuals on the grounds of violation of security regulations must always be referred to the competent examining magistrate within 24 hours, and the right of habeas corpus in particular is guaranteed;

- House searches and the collection of evidence by various means must be subject to an official report transmitted to the examining magistrate, together with a report on the reasons and the results;

- If the movement of persons or vehicles is restricted or prohibited, the authorities must provide the necessary means for enforcing the declaration, particularly in regard to the transport, housing and maintenance of the persons affected;

- The suspension of publications and of radio or television broadcasts and cinema and theatrical presentations, and the seizure of publications, must form the subject of a decision by a competent authority;

- Meetings of the statutory bodies of political parties, trade unions and occupational associations will in no circumstances be prohibited, dissolved or made subject to prior authorization.

115. According to Portuguese law, orders from superiors may in no case be invoked as a justification for an act which constitutes a criminal offence. This is confirmed by article 271, paragraph 3, of the Constitution, which stipulates:

"1. Officials and personnel of the State and other public bodies shall be responsible on civil, criminal and disciplinary grounds for acts and omissions committed by them in the exercise of, or on account of, their functions which give rise to infringements of the legally protected rights or interests of citizens. Action or proceedings taken in this respect shall not be subject at any stage to approval by a higher authority.

...

3. The duty of obedience shall cease whenever the carrying out of orders or instructions involves committing a criminal offence."

Article 3

116. The questions dealt with under this provision are covered by article 33 of the Constitution, which reads as follows:

"Extradition, deportation and the right of asylum

1. Portuguese citizens shall not be extradited or deported from the national territory.

2. No one shall be extradited for political reasons.

3. No one shall be extradited for crimes which carry the death penalty under the law of the requesting State.

4. Extradition shall be decided only by a judicial authority.

5. Deportation of persons who have entered or have been residing temporarily in Portuguese territory, of persons who have obtained a residence permit or of persons who have submitted an application for asylum which has not been rejected, shall be decided only by a judicial authority. The law shall provide for a rapid decision in this respect.

6. The right of asylum shall be guaranteed for aliens and stateless persons who are being prosecuted or seriously threatened with prosecution for their activities on behalf of democracy, social and national liberation, peace between peoples and the freedom and rights of the individual.

7. The status of political refugees shall be defined by law."

This provision is complemented by Decree-Law No. 43/91 of 22 January (Outline Act on international cooperation in criminal matters).

117. Article 30, paragraph 1, of the above-mentioned Decree-Law stipulates that extradition may take place for the purposes of criminal proceedings or of the application of a custodial penalty for a crime falling under the jurisdiction of the courts of the requesting State.

118. Whatever the case, the person in question may only be extradited in connection with a criminal offence (even if only attempted) which is punishable under Portuguese law and under the law of the requesting State by a custodial penalty of a maximum duration of not less than one year.

119. When extradition is requested for the purpose of executing a custodial penalty, the request can be granted only if the remaining part of the sentence to be served is not less than four months.

120. Extradition can be decided only by a judicial authority. However, Decree-Law No. 43/91 stipulates that extradition proceedings shall be dealt with urgently and shall comprise two phases: the administrative phase and the judicial phase.

121. The administrative phase involves the examination by the Government of the application for extradition in order to reach a decision as to whether it should be followed up or immediately rejected, either on political grounds or because it is considered untimely or inappropriate.

122. Once the interested party has been heard, the judicial phase falls exclusively within the competence of the Court of Appeal.

123. Extradition will be refused if there are serious grounds for believing that it has been requested for the purpose of prosecuting or punishing a person, in particular on account of his or her race, religion, sex, political or ideological convictions or membership of a particular social group (Decree-Law No. 43/91 of 22 January, art. 6, para. 1 (b)).

124. The same rule applies if there are grounds for believing that the sentence will be served in inhumane conditions or in conditions which are incompatible with the international protection of human rights.

125. These criteria, in fact, constitute mandatory grounds for refusal of extradition provided for in the bilateral treaties which bind the Portuguese State in this regard.

126. Moreover, Portugal even issued reservations in respect of article 1 of the European Convention on Extradition on the occasion of its ratification.

## Article 4

127. The observations which follow complete the remarks made in the first part of this report as well as those made with respect to article 2, paragraph 1 (see above, paras. 17 to 25 and 50 et seq.).

128. Under article 23 of the Penal Code, an attempted crime is also considered a criminal offence and is punishable by the same sentence as would be applicable to the crime itself in a specially mitigated form.

129. Wilful complicity is also punishable, under article 27 of the Penal Code, by the same sentence as that imposed on the perpetrator of the crime, again in specially mitigated form.

Sentences applied for different types of crimes

| Type of crime | Sentence applied | Aggravated sentence |
|---|---|---|
| Ordinary homicide | 8 to 16 years' imprisonment | 12 to 20 years' imprisonment |
| Homicide through negligence | up to 2 years' imprisonment | up to 3 years' imprisonment |
| Exposure to or desertion in the face of danger | 6 months' to 5 years' imprisonment | 1 to 5 years' imprisonment |
| Ordinary offence against the person | up to 2 years' imprisonment | |
| Serious offence against the person | 1 to 5 years' imprisonment | |
| Offence against the person entailing possible danger | 6 months' to 3 years' imprisonment | |
| Offence against the person aggravated by the consequences | 2 to 8 years' imprisonment | |
| Prohibited use of firearms | up to 6 months' imprisonment | up to 2 years' imprisonment |
| Ill-treatment of children or spouse | 6 months' to 3 years' imprisonment | 6 months' to 4 years' imprisonment (in the case of a serious offence against the person); 3 to 9 years' imprisonment (in case of death) |
| Threats | up to one year's imprisonment | up to 3 years' imprisonment |
| Coercion | up to two years' imprisonment | |
| Serious coercion (by an official, with misuse of powers) | 6 months' to 3 years' imprisonment | up to 5 years' imprisonment |
| Illegal detention | up to 2 years' imprisonment | 2 to 10 years' imprisonment |
| Slavery | 8 to 15 years' imprisonment | |
| Abduction | 4 to 8 years' imprisonment | 4 to 10 years' imprisonment or 15 years' imprisonment (in case of death) |
| Kidnapping of a minor | 6 to 10 years' imprisonment | 8 to 15 years' imprisonment |

130. The Penal Code and the Code of Penal Procedure are currently being revised by interministerial commissions. One of the aspects which is being considered is the scale of the penalties to be applied.

## Article 5

131. In Portugal, the criminal jurisdiction referred to in article 5 of the Convention is governed by articles 4, 5 and 6 of the Penal Code, which read as follows:

"Article 4. (Geographical application: general principle)

Portuguese penal law shall apply:

(a) to acts committed on Portuguese territory, whatever the nationality of the offender;

(b) to acts committed on board a Portuguese ship or aircraft.

Article 5. (Acts committed outside Portuguese territory)

1. Except where otherwise stipulated in treaties or conventions to which Portugal is a party, Portuguese penal law shall also apply:

(a) To acts committed outside the national territory if they constitute offences under articles 236 to 250, 288, 289, 334 to 352, 356 to 369, and 381;

(b) To acts committed outside the national territory, provided the offender is present in Portugal and cannot be extradited, if the said acts constitute offences under articles 161 to 163, 186 to 188, 189 (para. 1), 192 and 217;

(c) To acts committed outside the national territory by Portuguese nationals or by aliens against Portuguese citizens, provided:

I - The offenders are present in Portugal;

II - The acts are also punishable under the legislation of the place where they were committed, except if the punishment is not applied there;

III - The acts constitute extraditable offences and extradition cannot be granted;

(d) To acts committed outside the national territory against Portuguese nationals who, at that time, had their main residence in Portugal and were present at that residence.

2. Portuguese penal law also applies to acts committed outside the national territory and which the State of Portugal is bound by an international treaty or convention to prosecute.

Article 6. (Restrictions on the application of Portuguese law)

1. Portuguese penal law shall apply to acts committed outside the national territory only if the offender has not been prosecuted by the country in which the act was committed or if he has evaded the execution in whole or in part of the sentence passed.

2. Although in accordance with the preceding paragraph Portuguese law may be applicable, the act shall be prosecuted according to the law of the country in which it was committed if such law is substantially more favourable to the offender. The sentence which applies shall be converted into a corresponding sentence in the Portuguese system or, if no direct parallel can be drawn, into the sentence which Portuguese law would impose for the same offence.

3. The regime described in the preceding paragraph shall not apply to offences under article 5, paragraph 1 (a).

4. If the offender has been prosecuted abroad and is prosecuted in Portugal for the same offence, the sentence passed shall always take into account the sentence already served abroad."

Article 6

132. In considering the effects of this article, a distinction must be drawn between remand in custody for the purpose of criminal prosecution and remand in custody for the purpose of extradition.

133. Remand in custody for the purpose of extradition remains possible, in the absence of an international convention or treaty, under Decree-Law No. 43/91 of 22 January 1991, on a basis of reciprocity.

134. Decree-Law No. 43/91 also provides for the exchange of information between States in this regard.

135. Remand in custody for the purpose of criminal prosecution is governed by articles 254 et seq. of the Code of Penal Procedure.

136. Pursuant to article 254 of the Code, custody is imposed in order to bring the accused person before the examining magistrate within a maximum period of 48 hours or in order to restrain him from committing certain acts.

137. Remand in custody of persons caught in flagrante delicto is legally possible for all crimes punishable by a prison sentence (art. 255).

138. Remand in custody of persons who were not caught in flagrante delicto requires a warrant from the examining magistrate or, in cases where pre-trial detention is admissible, from the representative of the public prosecutor's department (art. 257, para. 1).

139. The police may also order remand in custody of persons who were not caught in flagrante delicto in cases where pre-trial imprisonment is admissible, if there is danger of escape or if the urgency of the situation requires prompt intervention by the judicial authority.

140. Pursuant to article 202, pre-trial imprisonment may be applied if there is strong evidence of a wilfully committed offence punishable by a sentence exceeding three years' imprisonment; if the offender has unlawfully entered the national territory; or if extradition or deportation proceedings have been instituted against him. Moreover, the criteria set forth in article 204 (escape or danger of escape; danger of loss of evidence; or the personality of the accused person) are also applicable.

141. Portugal is a party to the Vienna Convention on Consular Relations, which stipulates in article 36 that consular officers of a State must be informed of the provisional arrest of one of its nationals, if he so requests, and must be free to communicate with him and protect his interests.

142. The obligation to notify other States parties to the Convention of any remand in custody and to inform them of the results of the preliminary investigation will be observed as long as it is not incompatible with commitments flowing from the obligation to protect privacy under the Constitution and the law (Act on the protection of personal data) and under such international instruments as the International Covenant on Civil and Political Rights (art. 17) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (art. 8).

## Article 7

143. Under this article the States parties are bound, in certain cases, to exercise the competence established in article 5, thus applying the principle of aut dedere aut judicare which national law on extradition in turn recognizes (art. 31, para. 2, of Decree-Law No. 43/91, of 22 January).

144. Moreover, the obligation to prosecute the perpetrator of a criminal offence whose extradition is not possible (for example, because there are grounds which place Portugal under the obligation to refuse to cooperate) is already established in various international agreements which are binding on Portugal. 1/ Thus, if Portugal does not allow the extradition of the person in question, it is bound to bring criminal proceedings against him.

145. In that case the rights and procedural safeguards of the accused under the Constitution and the law are fully respected, and the terms of the treaty do not entail any special derogation from the general rules on the subject.

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1/ This is the case for example, of the extradition convention with Australia.

## Article 8

146. In Portugal, as stated previously with respect to article 3, extradition is governed by article 33 of the Constitution and by Decree-Law No. 43/91 (outline Act on international cooperation in criminal matters), which is applied in the absence of an international treaty on the subject.

147. Decree-Law No. 43/91, like most of the extradition treaties to which Portugal is a party, applies the so-called elimination system under which, theoretically, extradition is justified for all criminal offences punishable by a custodial sentence of a certain duration (generally from four or six months to one year) in both the requesting State and the State which receives the request.

148. The above-mentioned Decree-Law makes provision for some exceptions to the obligation to grant extradition, such as military and political criminal offences. The same rule can be found in the extradition treaties to which Portugal is a party.

## Article 9

149. International mutual judicial assistance in criminal matters is also governed by Decree-Law No. 43/91 (arts. 135 et seq.). This Decree-Law is applied in the absence of an international treaty on the subject. Its application is thus subsidiary (see the relevant regulations set forth in the above-mentioned Decree-Law included in the annex to this report, in particular articles 135 to 153).

## Article 10

150. On this subject reference is made to the comments regarding article 2, and in particular paragraphs 5, 98 and 108 above.

151. Instruction on the legislation concerning fundamental rights is part of the standard training course for the various police forces. Special emphasis is laid on the provisions of the Constitution, the Penal Code and the Code of Penal Procedure and on the international treaties for the promotion of these rights (the Covenants and other instruments of the United Nations and the United Nations and Council of Europe conventions on human rights and against torture, etc.).

152. Since 1989 in particular, as the result of a change in the curriculum of the training courses for the police, special attention has been given to the need to treat suspects and detainees humanely.

153. Decree-Law No. 346/91 of 18 September created a new job category at the higher technical level in re-education within the Directorate-General of Prison Services.

154. Protection against torture and other forms of ill-treatment receive special emphasis in the organizational regulations governing the different police forces (for example, art. 91 of Decree-Law 295-A/90, of

21 September 1990). Offences committed in this field give rise to disciplinary and penal sanctions. 2/

155. The orientation and supervision of the activities of the police forces is the responsibility of the public prosecutor's department.

156. The Provedor di Justiça also has responsibilities for inspecting the activities of the police forces to assess the appropriateness and the legality thereof.

Article 11

157. The legal framework established for the prevention of torture and other forms of ill-treatment and, where necessary, for the punishment thereof has already been outlined.

158. Acts of torture are, as stated before, subject to criminal and disciplinary sanctions. The general legal framework, consisting of the Constitution, the Penal Code and the Code of Penal Procedure, as well as the instruments of international law concerning protection against torture, form an integral element in the standard training courses of the police forces.

159. In addition, the organizational and statutory regulations governing the police forces (for example, article 91 of the basic law of the public prosecutor's department, Decree-Law No. 292-A/90 of 21 September) also contain provisions prohibiting the practice of torture and prescribing sanctions in respect thereof, because they are fundamentally inspired by the humanitarian principles governing the treatment of individuals, and of detainees in particular, contained, for example, in the United Nations Standard Minimum Rules for the Treatment of Prisoners.

160. There is effective monitoring of the application of these rules by various entities (depending on the nature of the activities of the departments); these are described later.

161. The Portuguese Association for the Support of Victims, was established by an authentic instrument dated 25 June 1990, and published in the Official Journal of 12 July 1990, Series III, to promote and help to provide information, protection and support for the victims of criminal offences, proposes in particular:

> "1. (a) To promote the protection of and support for the victims of criminal offences generally, and in particular for those in greatest need, through information, individual attention and guidance and the provision of moral, social, legal, psychological and financial assistance;

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2/ In this connection, reference is made, for example, to the provisions of article 412 of the Penal Code, under which a government official who, in the course of criminal or disciplinary proceedings or proceedings relating to an administrative offence, resorts to violence, serious threats or any other form of illegal constraint, has committed a punishable offence.

(b) To cooperate with the competent bodies of the justice administration, the police, social security and health, as well as with the local and autonomous regional authorities and any other public or private entity, for the protection and the effective exercise of the rights and interests of the victims of criminal offences and their families;

(c) To encourage and promote solidarity within society, for example, through the training and operation of networks of volunteer workers and patrons, as well as through mediation between the victim and the offender;

(d) To encourage and sponsor research into and studies of the problems of victims in order to secure greater satisfaction of their interests;

(e) To promote and participate in programmes, projects and activities in the fields of information and training and to promote greater awareness among the public;

(f) To contribute to the adoption of legislative, regulatory and administrative measures which may facilitate the defence of the victims of criminal offences and their protection of and support with a view to the preventing of the risks of victimization and mitigating its effects;

(g) To establish contacts with international organizations and to work closely with bodies in other countries with similar goals.

2. The Association may become affiliated to international associations pursuing the same goals and may become their representative in Portugal.

3. In the performance of its duties, the Association may actively seek means of obtaining financial resources, in particular from public and private bodies, both Portuguese national and foreign."

162. The office of the Provedor de Justiça (mediator or ombudsman) is an independent institution whose primary function is the defence and promotion of the rights, freedoms, safeguards and legitimate interests of the citizens.

163. It is an independent public body, dedicated to the defence of the rights and legitimate interests of the citizens, by the use of informal methods which safeguard the legality and the justice of the administration. By his mediatory action to protect human rights, the Provedor naturally has an impact on the implementation of the rights recognized by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which are also reflected in the text of the Constitution.

164. The regulations governing the office of the Provedor, provide that any citizen may submit to him, orally or in writing, complaints about acts or omissions of the public authorities. The Provedor, after investigating a complaint, shall submit to the competent bodies the necessary recommendations for the prevention or the remedying of any injustice.

165. Furthermore, the Provedor is required:

- to submit recommendations for remedying any illegal or unjust acts or improving the services of the administration;
- to point out any flaws in the legislation and ask for an assessment of the legality or the unconstitutionality of any statutory instrument;
- to deliver opinions on any questions put to him by the Assembly of the Republic;
- to ensure the dissemination of information on the fundamental rights and freedoms, their contents and value and the aims and the work of the Provedor.

166. In this specific area, public information programmes are frequently printed in the press and broadcast on the radio and television. A regular programme called the Voice of the Provedor has been introduced on the national radio; this programme has contributed decisively to making the work of this important body known, especially to the elderly, among whom there is still an excessively high level of illiteracy.

167. In the performance of his duties, the Provedor may:

(a) Carry out inspection visits in any branch of the administration, examine the documents, hear the agencies and officials of the administration or request any information which he deems necessary;

(b) Conduct, by any means, whatever inquiries he deems necessary for discovering the truth, without, however, infringing the legitimate rights and interests of the citizens. An inquiry was made, for example, into acts of torture allegedly committed by certain police officers and prison administration officials which, because of the strong media and public reaction, led to the adoption of various measures by the public authorities;

(c) Seek, in cooperation with the competent bodies and departments, the most satisfactory means of safeguarding the legitimate interests of the citizens and improving the work of the administration.

168. The Provedor may order the publication of press releases or information on any findings reached, making use of the media where necessary. In addition he submits annual reports on his activities to the Assembly of the Republic. These reports include statistical data on the number and nature of the complaints filed, the complaints of unconstitutionality submitted and any recommendations made; they are published in the Official Journal of the Assembly.

169. Act No. 9/91 of 9 April establishes the rules governing the activities of the Provedor. It reiterates the wording of article 23 of the Constitution, which reads as follows:

"1. Citizens may present complaints concerning acts or omissions on the part of the public authorities to the Provedor de Justiça (Ombudsman). Although having no decision-making power, he shall examine them and make such recommendations as are necessary to the competent bodies in order to prevent and remedy any injustice.

2. The activities of the Provedor shall be independent of any discretionary or judicial remedies provided for by the Constitution and the laws.

3. The Provedor's Office shall be an independent organ. The Provedor himself shall be appointed by the Assembly of the Republic.

4. The agencies and officials of the public administration shall cooperate with the Provedor in the performance of his duties."

170. In recent years the Provedor has systematically monitored the work of the different police forces by launching inquiries into their activities, either on his own initiative or following complaints filed by citizens.

171. This systematic monitoring was already under way well before the ratification of either the United Nations Convention or the Convention adopted by the Council of Europe; it naturally increased after the ratification by Portugal of these instruments.

172. The following table shows the numbers of legal proceedings brought by the Provedor concerning police violence in penal establishments:

| Legal proceedings brought by the Ombudsman concerning police violence in the penal establishments | | | |
|---|---|---|---|
| Year | Legal proceedings concerning charges relating to alleged police violence | Legal proceedings concerning charges relating to alleged use of violence against detainees | Findings |
| 1987 | 35 | 6 | |
| 1988 | 18 | | 1 case of police violence |
| 1989 | 27 | | 2 cases of police violence |

173. Lastly, mention should be made of the work of the agencies which initiate criminal proceedings (public prosecutor's department) which take action whenever criminal offences are brought to their attention, and also the work of the courts, which always apply the appropriate penalties once an offence has been proven.

## Article 12

174. When a crime is reported, criminal investigation is always undertaken by the criminal prosecution agencies - the public prosecutor's department, assisted by the judicial police (arts. 241 ff of the Code of Penal Procedure).

175. Pursuant to article 122, paragraph 5 of Decree-Law 265/79 of 1 August, if disciplinary measures are taken against detainees, a written inquiry is automatically conducted into the circumstances which caused the taking of such measures.

176. If commission of an offence is established, the disciplinary and penal responsibility must be determined.

177. In the case of death an autopsy is performed to determine the exact causes of death.

178. In accordance with the above provisions, the Department of Prison Services always conducts a rigorous inquiry whenever there is any suspicion that acts of torture or ill-treatment have been committed by prison officers, including prison warders.

179. In this connection, there are two examples of cases where inquiries were made into penal establishments - the Vale de Judeus prison (in 1990) and the Linhó prison.

180. After the inquiry has been completed and the responsibility has been established, the necessary disciplinary and criminal sanctions must where appropriate be applied.

181. This occurred in the case of the Director of the Linhó prison, against whom the sanction of forced resignation was applied.

182. A similar case was that of a Government official who was sentenced to 18 months' imprisonment for committing homicide with a firearm that had been issued to him for the performance of his duties (Decision No. 24.214 of the Criminal Court of Lisbon, of 25 January 1989).

## Article 13

183. Pursuant to article 20 of the Constitution:

> "1. Everyone shall be guaranteed access to the courts to defend his or her rights. Justice may not be denied to a person for lack of financial resources.

2. All citizens shall have the right to legal information and counsel, as well as to legal aid."

184. Article 21 of the Constitution further stipulates that "anyone shall have the right to resist an order that violates his rights, liberties or safeguards, and to repel by force any aggression when recourse to public authority is impossible".

185. Decree-Law 387-B/87 of 29 December regulates the legal aid system in Portugal, while Decree-Law 391/88 of 26 October governs the financial aspects of legal aid.

186. Thus right to lodge a complaint for purposes of initiating criminal and disciplinary proceedings against offenders is established and guaranteed.

187. Application to the Provedor is also provided for and guaranteed as described above.

188. Special provision is also made to guarantee right to bring an action in respect of a person deprived of his freedom.

189. Decree-Law 265/79, of 1 August, guarantees the right of all detainees to be informed of the facts, right to lodge a complaint and the right to appeal (art. 138). In order to exercise these rights they may apply personally or otherwise to the prison governor, to the prison officers or to the inspectors of prisons. Detainees may also apply to the visiting magistrate, who visits the prison at least once a month (art. 139). They may also apply to the court responsible for the enforcement of sentences with jurisdiction over their own sentences. Once all the domestic legal remedies have been exhausted, appeals may also be made to the international bodies which, pursuant to the treaties to which Portugal is a party, are competent to examine such complaints, such as the bodies established under the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights.

190. Portugal expressly recognizes the need to protect witnesses and plaintiffs from intimidation subsequent to the submission of information or testimonies. In practice, the police endeavour to provide such protection while preserving the anonymity of witnesses who feel threatened. In the courts, anonymity is preserved by the public prosecutor's department during the criminal investigation stage.

## Article 14

191. There are several ways in which the victims of violence may obtain compensation under Portuguese law: the basic rule is contained in article 483 of the Civil Code, under which anyone who wilfully or negligently causes injury to another person must pay compensation for the injury suffered. The law also provides for risk liability.

192. The liability of public authorities is defined in article 22 of the Constitution in the following terms:

> "The State and other public bodies shall bear civil liability jointly and severally with the members of their agencies, their officials or employers, for any act or omission committed in the discharge of their duties, or in connection therewith, which entails a violation of the rights, liberties and guarantees of another person or injury to another person."

193. Similarly, Decree-Law 48051, article 2, of 31 November 1967 determines the extracontractual liability of the State for acts of public administration as follows:

> "The State and any other public legal persons shall bear civil liability towards third parties for any violations of their rights or of the legal provisions intended to protect their interests if such violations are attributable to unlawful acts wrongfully made by their institutions or administrative agents in the discharge of their duties."

194. As a rule applications for compensation must be submitted to the court competent to judge the criminal offence, if there is one (art. 71 of the Code of Penal Procedure). Acquittal in criminal proceedings does not of itself entails loss of the right to compensation (art. 377 of the same code).

195. Act 64/91 of 13 August is designed to allow the Government to legislate in order to provide crime victims generally with provisional compensation pending a final decision by the court.

196. Decree-Law 423/91 of 30 October, referred to earlier, is designed to improve the regime of the Code of Penal Procedure in this respect, i.e. as regards the victims of violent crime.

## Article 15

197. Article 32, paragraph 6, of the Constitution stipulates:

> "Any evidence obtained through torture, coercion, violation of the moral integrity or security of the individual, or wrongful interference in private life, the home, correspondence or telecommunications shall be null and void."

198. Similarly, the Code of Penal Procedure (art. 126) stipulates that any evidence thus obtained may be used only in criminal proceedings against whoever obtained them.

199. Article 412 of the Penal Code provides for the punishment of an official who uses violence, serious threat or any other coercive measures to obtain testimony or a statement.

Article 16

200. In this connection, please refer to the information provided on articles 10, 11, 12 and 13.

201. It should also be recalled that article 16, paragraph 2, and article 18, paragraph 1, of the Constitution stipulate:

"Article 16

2. The constitutional and legal norms relating to fundamental rights shall be interpreted and applied in accordance with the Universal Declaration of Human Rights."

...

"Article 18

1. The constitutional provisions relating to rights, freedoms and safeguards shall be directly applicable to and binding on public private bodies."

List of annexes*

LEGISLATION

Constitution of the Republic of Portugal

Decree-Law 48051, of 21 November 1967 - Extracontractual liability of the State for acts of public administration

Decree-Law 265/79, of 1 August 1979 - Prisons Act

Decree-Law 49/80, of 22 March 1980 - Amending Decree-Law 265/79 of 1 August

Decree-Law 400/82, of 23 September 1982 - Penal Code

Act 29/82, of 11 December 1982 - National Defence and Armed Forces Act

Decree-Law 90/83 of 16 February 1983 - Juvenile detention centres

Decree-Law 333/83, of 14 July 1983 - National Republican Guard Regulations

Decree-Law 151/85, of 9 May 1985 - Public Safety Police Regulations

Decree-Law 324/85, of 6 August 1985 - Compensation for officials who are victims of violence

Decree-Law 282/86, of 5 September 1986 - Selection and recruitment of private security personnel

Act 44/86, of 30 September 1986 - State of siege and state of emergency

Decree-Law 48/87, of 29 January 1987 - Incorporating members of juries as State employees under the terms and subject to the provisions of Decree-Law 324/85 of 6 August

Decree-Law 78/87, of 17 February 1987 - Code of Penal Procedure

Decree-Law 387-B/87, of 29 December 1987 - Legal aid and assistance

Decree-Law 101-A/88, of 26 March 1988 - Amending the provisions of the Penal Code

Decision 11/88, of 21 May 1988 - Adoption by the Portuguese Parliament of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Decree-Law 391/88, of 26 October 1988 - Legal aid and assistance

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* These documents, as received in French and Portuguese from the Government of Portugal, are available for consultation in the files of the United Nations Centre for Human Rights.

Order 195/ME/88, of 10 December 1988 - Commission to promote human rights and combat inequalities in education

Decree-Law 39/90, of 3 February 1990 - Amending the National Republic Guard regulations

Order 32/90, of 17 April 1990 - "Citizen and Justice" programme

Decree-Law 295-A/90, of 21 September 1990 - Statutory regulations governing the judicial police

Act 9/91, of 9 April 1991 - Statutory regulations pertaining to the ombudsman

Decree-Law 43/91, of 22 January 1991 - International legal cooperation in criminal matters

Decree-Law 260/92, of 25 July 1992 - Statutory regulations relating to the National Republican Guard

Decree-Law 61/91, of 13 August 1991 - Special protection for women who have suffered from violence

Act 113/91, of 29 August 1991 - Outline law on civil defence

Decree-Law 346/91, of 18 September 1991 - Defining the function of specialists in re-education within the Directorate-General of Prisons

Decree-Law 423/91, of 30 October 1991 - Special protection for the victims of violent crime

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States of emergency under Portuguese constitutional law.

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